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2 UNITED STATES DISTRICT COURT
3 CENTRAL DISTRICT OF CALIFORNIA
4 WESTERN DIVISION

5 CE SOIR LINGERIE CO., INC., d/b/a
6 FASHION FORMS, INC., d/b/a
7 LINGERIE SOLUTIONS,

8 Plaintiff(s),
9 -v- Case No.:
10 2:11-cv-07291 DMG(FMOx)

11 IMAGINE ENTERPRISES, LLC.,

12 Defendant(s).
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14 IMAGINE ENTERPRISES, LLC.;
15 TARA CAVOSIE,

16 Counter-Claimant(s),
17 -v-
18 CE SOIR LINGERIE CO., INC., d/b/a
19 FASHION FORMS, INC., d/b/a
20 LINGERIE SOLUTIONS; BEVERLY
21 ANN DEAL,

22 Counter-defendant(s).
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24 VIDEOTAPED DEPOSITION OF:

25 TARA CAVOSIE

HELD: Tuesday, August 14, 2012

ALBANY, NEW YORK

REPORTED BY: ROBERTA-ANNE SCHMITT

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2 APPEARANCES OF COUNSEL
3

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WITNESS BY PAGE
Tara Cavosie MR. CARSTEN 13

TO EXHIBITS (Attached to transcript)

MARKED FOR ID	DESCRIPTION	PAGE
Plaintiff's 1	United States Patent No. US 6,231,424 B1	7

Plaintiff's 2 United States Patent No. US 8
6,257,952 B1

Plaintiff's 3 United States Patent No. US 8
6 383 055 B2

Plaintiff's 4 United States Patent No. US 8
6,231,424 B1, previously
Bates stamped IMAGINE000001
through 126

Plaintiff's 5 Declaration of Tara Cavosie
in Support of Imagine's
Opening markman Brief
Addressing U.S. Patent Nos.:
6,231,424, 6,257,952, and
6,383,055

Plaintiff's 6 Document identified as
Document 38-1 filed 07/26/12
Page 2 of 27

Plaintiff's 7 Joint Claim Construction Statement 9

Plaintiff's 8 United States Patent No.
 4,992,074, previously Bates
 stamped Ce Soir 003729
 through 3733

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	MARKED FOR ID	DESCRIPTION	PAGE
																									Plaintiff's 10	United States Patent, Mellinger, 3,934,593, previously Bates stamped CeSoir003577 through 3580	9
																									Plaintiff's 11	Document dated Jan. 20, 1959, N. D'Or, 2,869,553, previously Bates stamped CeSoir003426 through 3428	10
																									Plaintiff's 12	Document dated Feb. 14, 1939, J. Lazzari, 2,147,375, previously Bates stamped CeSoir003303 through 3305	10
																									Plaintiff's 13	Document dated May 4, 1937, M. Schottenfels, 2,079,426, previously Bates stamped CeSoir003291 through 3294	10
																									Plaintiff's 14	Document dated Sept. 7, 1965, J. Winkler, 3,204,638, consisting of three pages	10
																									Plaintiff's 15	Document indicating No. 494,397, M. Tucek, Patented Mar. 28, 1893, previously Bates stamped CeSoir003726 through 3728	10
																									Plaintiff's 16	Document dated Nov. 17, 1936, H. Klein, 2,061,238, consisting of two pages	11
																									Plaintiff's 17	8 1/2 x 14 document entitled Intrigue, The Original No Back, Strapless Bra, previously Bates stamped CeSoir001347	11
																									Plaintiff's 18	United States Patent Number Des. 419,279, previously Bates stamped CeSoir004481 through 4483	11

1			
2	TO EXHIBITS (cont'd)		
3	MARKED FOR ID	DESCRIPTION	PAGE
4	Plaintiff's 19	Photocopy of bra	46
5	Plaintiff's 20	StayKup, Nude, Size B	58
6	Plaintiff's 21	Fashion Forms StayKups box	59
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1

2 F E D E R A L S T I P U L A T I O N S

3 IT IS HEREBY STIPULATED AND AGREED by and
4 between the attorneys for the respective parties
5 hereto that filing, sealing and certification be
6 and the same are hereby waived.

7

8 IT IS FURTHER STIPULATED AND AGREED that all
9 objections, except as to the form of the
10 question, shall be reserved to the time of the
11 trial.

12

13 IT IS FURTHER STIPULATED AND AGREED that the
14 within examination may be subscribed and sworn
15 to before any notary public with the same force
16 and effect as though subscribed and sworn before
17 the court.

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T. Cavosie - 8-14-2012

2 THIS IS THE ORAL DEPOSITION OF TARA
3 CAVOSIE, the/on behalf of the DEFENDANT herein,
4 produced pursuant to AGREEMENT on Tuesday,
5 August 14, 2012, before ROBERTA-ANNE SCHMITT, a
6 Court Reporter and Notary Public in and for the
7 State of New York.

* * * *

12 | THE WITNESS: Tara Cavosie.

16 THE WITNESS: 3 Loudon Lane
17 South, Loudonville, New York 12211.

18 MR. CARSTEN: Would you
19 please mark these.

20 IT WAS REQUESTED THE
21 REPORTER MARK THE FOLLOWING EXHIBITS
22 PRIOR TO THE START OF THE
23 PROCEEDINGS:

24 (At which time, Plaintiff's
25 Exhibit 1, United States Patent No.

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2 asking my questions from the
3 beginning then.

4 MR. DILGER: If we're
5 talking about generally has nothing
6 to do with her patents, has nothing
7 to do with the subject matter of
8 this lawsuit, then we're wasting all
9 our time.

10 MR. CARSTEN: Nate, are you
11 going to allow your witness to
12 provide an answer?

13 MR. DILGER: No. Not to
14 that question. I won't.

15 MR. CARSTEN: To what
16 question? I haven't asked a
17 question, Nate.

18 MR. DILGER: If you want to
19 talk about the subject matter of
20 this litigation, let's do that.

21 MR. CARSTEN: Yes, Nate.
22 I'm about to ask a question.

23 Will you permit me to ask a
24 question?

25 MR. DILGER: Go ahead.

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2 BY MR. CARSTEN:

3 Q Ms. Cavosie, do you have an opinion
4 regarding the meaning of the phrase
5 "Wherein each cup is U-shaped," as that
6 phrase is used in the asserted patents?

7 A In my opinion, "U-shaped," in reference to
8 the patent or --

9 Sorry. That's not what I meant to say.

10 In my opinion, "U-shaped" means an arcuate
11 bottom with an open top having the general
12 appearance of the shape of the letter U.

13 Q And is that your expert opinion regarding
14 how that phrase is used with respect to
15 the asserted patents in the present
16 litigation?

17 A Yes.

18 Q Okay. Now, I'd like to ask you about the
19 phrase, "open top end."

20 That is part of your definition of the
21 phrase "Wherein each cup is U-shaped," as
22 that phrase is used in the asserted
23 patents in this litigation; correct?

24 A I'm sorry. Say that one more time.

25 Q Is the component, "An open top end," part

1 T. Cavosie - 8-14-2012

2 of your definition of the term or phrase
3 "Each cup is U-shaped," as it appears in
4 the asserted patents?

5 A I say, "open top end," when I'm talking
6 about U-shaped cups having an arcuate
7 bottom with an open top.

8 Q And what do you mean by, "open top end"?

9 A I mean it's open.

10 Q Okay. What does it mean for a top end to
11 be open?

12 A It's open.

13 Q What does it mean for a top end to be
14 closed?

15 A It's closed.

16 Q Other than using the phrase, the terms,
17 "open and closed," can you not describe
18 for me what an open top end is versus what
19 a closed top end is?

20 A I might have to look into that a little
21 bit further, but an open top end means
22 open.

23 Q What does "open" mean to you?

24 MR. DILGER: It's like
25 asking her what "red" means.

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2 THE WITNESS: I don't -- I
3 mean, yeah. I don't -- I don't.

4 BY MR. CARSTEN:

5 Q So, for instance, Denny's opens at 9 A.M.
6 Does the open top end of a bra mean that
7 it opens at 9 A.M?

8 A I'm not going to answer that. I don't
9 know --
10 It's ridiculous.

11 MR. DILGER: Objection.

12 It's argumentative.

13 A I mean, you are asking me --

14 Q Ms. Cavosie you're under oath.
15 I'm asking what "open" means with respect
16 to "open top end."

17 A It means it's open.

18 Q Open to whom?

19 A It means the top end is open.

20 Q Meaning it's not secured to the chest?

21 A I'm not answering that.

22 Q Well, Ms. Cavosie, I will get a order that
23 you need to answer that and I will fly
24 back up.

25 A I'm saying --

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2 MR. DILGER: You'll try, but
3 there's a problem here.

4 MR. CARSTEN: Nate, I don't
5 know if you need to have another
6 conversation with your client, but
7 when I ask a question of what open
8 top end means with respect to an
9 opinion that she's given that has
10 the phrase open top end and I'm told
11 that, "I'm not going to answer
12 that."

13 THE WITNESS: No, that's not
14 what I meant. I just meant that
15 I --

16 When you asked me what
17 "open" means, it's open. I don't
18 know how much more I can give you.
19 Now you're asking me something in
20 relation to Denny's restaurant and I
21 wouldn't even begin to tell you how
22 I would relate something to Denny's
23 restaurant. I don't -- I don't --

24 That's what I meant. I
25 can't answer anything relating to

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2 Denny's restaurant.

3 BY MR. CARSTEN:

4 Q Okay. So with respect to open top end, as
5 you've used it, with respect to the
6 asserted patents, how would you describe
7 "open" to somebody that's not familiar
8 with that term?

9 A It's an open top end, meaning it's open.

10 Q Have you ever been involved in bra design,
11 Ms. Cavosie?

12 A I'm sorry, say that one more time.

13 Q Have you ever been involved in bra design,
14 Ms. Cavosie?

15 A Have I ever been involved in bra design?

16 Q Yes.

17 A Yes.

18 Q Have you ever worked with a manufacturer?

19 A Yes.

20 Q Okay. If you told a manufacturer, "I'd
21 like an open top end on my bra," what
22 would be the plain and ordinary meaning of
23 that?

24 A Make it open.

25 Q Okay. And if the manufacturer says, "What

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2 does that mean? How do I cut the fabric?
3 What do I construct?" how would you
4 respond?

5 A Well, I think there's a lot of factors
6 that would come into play there so I
7 wouldn't be able to give you a definitive
8 answer on that.

9 Q So "open top end" can mean a lot of
10 different things?

11 A No. I'm saying that it would -- you're
12 talking about cutting the fab --
13 You were talking about cutting the fabric,
14 but that's --
15 I'm not sure what you mean.

16 Q Does open top end have something to do
17 with the shape of a cup?

18 A Yeah, because we're talking about cup --
19 the U-shaped cups that have an arcuate
20 bottom and an open top end.

21 Q What is the structure of the cup that
22 makes the top end open?

23 A It has an arcuate bottom and an open top
24 end.

25 And having the general appearance of the

1 T. Cavosie - 8-14-2012

2 letter U.

3 Q Could you turn to Exhibit 17?

4 A Seventeen?

5 Q Yes.

6 A I think I only have one through seven.

7 Q Have we not --

8 You're right. Here is Exhibit 17

9 (Handing).

10 MR. CARSTEN: Exhibit 17 is
11 an ad for the Intrigue bra.

12 MR. DILGER: Okay.

13 BY MR. CARSTEN:

14 Q Ms. Cavosie, I direct your attention to
15 the picture on the upper left.

16 Is the bra that is depicted in that
17 picture, does that --

18 MR. CARSTEN: Strike that.

19 BY MR. CARSTEN:

20 Q Does the bra that is depicted in the
21 picture in the upper left corner of
22 Exhibit 17 have an open top end?

23 A You talking about the photograph?

24 Q The photograph, correct.

25 THE WITNESS: You see this,

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2 Nate?

3 MR. DILGER: Yeah. Thank
4 you.

5 THE WITNESS: Intrigue bra
6 is not in my -- was not referenced
7 in my Declaration, and I thought we
8 were only speaking about what is
9 within the Declaration.

10 MR. DILGER: Well, if you
11 can tell from that photograph and
12 the information that he's provided
13 whether that's an open top end or
14 not, go ahead and give your answer.

15 If you need more information, then
16 go ahead and say that. But if
17 that's enough information to answer
18 that question, give it your best
19 shot, otherwise --

20 THE WITNESS: Okay.

21 A Can you ask it one more time? Sorry, I --

22 Q Sure.

23 Does the bra that's depicted in the
24 photograph in the upper left-hand corner
25 of Exhibit 17, in your expert opinion,

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2 have an open top end?

3 A No.

4 Q Why not?

5 A Because it's closed.

6 Q And what is it that makes it closed?

7 MR. DILGER: You can answer
8 to the extent you can based on the
9 information you have.

10 A Because no top portion of the breast is
11 showing through the -- is protruding from
12 the cup.

13 Q So does whether or not a portion of the
14 breast protrudes from the top of the cup
15 relate to whether or not a cup is open?

16 A Say that one more time. I'm sorry.

17 Q Does whether or not part of the breast
18 protrudes from the upper part of a cup
19 relate to whether or not that cup is, or
20 has, an open top?

21 MR. DILGER: To the extent
22 you understand the question, you can
23 answer.

24 THE WITNESS: I'm sorry?

25 MR. DILGER: To the extent

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2 you understand the question, you can
3 answer.

4 THE WITNESS: Okay.

5 A Say it one more time. You're going to
6 hate me, I know it. I'm sorry.

7 Q Does the extent to which a portion of the
8 breast protrude above the top of the bra
9 relate to whether or not that bra cups
10 have open top ends?

11 A Well, you said to the "top of the bra."
12 Do you mean to the -- you said --
13 I think you said two different things.
14 I'm sorry.

15 Q Does whether or not a portion --

16 MR. DILGER: Eric, can
17 you -- I'm sorry to cut you off, do
18 you mind rereading her answer, her
19 original answer on whether or not it
20 was a -- why it was not an open top
21 end? I think that's where we're
22 getting confused.

23 MR. CARSTEN: I'm asking a
24 question other than with respect to
25 the Intrigue bra, so...

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2 cups?

3 A Yes.

4 Q Are the upper portions --

5 A I mean, not totally, because it's a little
6 cut off on the --

7 | Okay. Let's --

8 A If you're looking at it from the right
9 side (Indicating).

10 | Q Let's focus on the top cup.

11 Can you see the upper portions on the top
12 cup?

13 A Only of the -- my left-hand-side cup,
14 because this part is cut off here
15 (Indicating).

16 Q Right. So let's focus on the lower
17 left-hand-side cup.

18 Can you see clearly the upper portions of
19 that cup?

20 A T_{can}

21 Q Are the upper portions of that cup
22 substantially parallel, in your expert
23 opinion?

24 A Which upper portions?

25 0 Do you understand that the phrase, "An

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2 outer side and an inner side each having
3 substantially parallel upper portions," is
4 a phrase that you opined on as an expert
5 in your Declaration?

6 A Yes.

7 Q Using your understanding of that phrase,
8 as you gave in your Declaration, are the
9 upper portions of the inner side and the
10 outer side of the left-hand cup in
11 Exhibit 19 substantially parallel?

12 A I would say no.

13 MR. CARSTEN: Can we go off
14 the record?

15 THE VIDEOGRAPHER: The time
16 is now approximately 3:13 P.M.
17 Going off the record.

18 (At which time, 3:13 P.M.,
19 there was a pause in the proceedings
20 until 3:22 P.M., at which time the
21 proceedings resumed.)

22 THE VIDEOGRAPHER: The time
23 is now approximately 3:22 P.M.
24 Going back on the record.

25

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2 Q Does this have an open top end?

3 | A No.

4 Q And why, in your opinion, does it not have
5 an open top end?

6 MR. DILGER: You can
7 answer --

12 MR. DILGER: If you
13 understand the question based on
14 your review of what you're seeing
15 just now, you can answer. But if
16 you need more information...

17 THE WITNESS: Well, I'm just
18 concerned because I feel it's
19 outside of the scope of what was in
20 my Declaration, and I was under the
21 understanding that we were
22 discussing only what was in the
23 Declaration, and StayKups are not --

24 MR. CARSTEN: Let me put it
25 this way.

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2 BY MR. CARSTEN:

3 Q Ms. Cavosie, are you not comfortable
4 opining as whether or not this has an open
5 top end?

6 A No, I'm comfortable saying it. I just
7 don't want to speak freely about something
8 not in my Declaration when I'm here to
9 talk about my Declaration only.

10 Q And can you explain how this does not have
11 an open top end?

12 A Well --

13 MR. DILGER: If you
14 understand, you can answer that
15 question.

16 THE WITNESS: Okay.

17 MR. DILGER: If he goes
18 further afield I think we're going
19 to shut it down.

20 A It doesn't have an open top end because
21 the upper portion of the breast is not
22 exposed, and as you can see, it's curled
23 inward. Curls inward and almost
24 (Indicating).

25

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2 BY MR. CARSTEN:

3 Q And almost?

4 A Period. It curves inward, period. Sorry.

5 Q So if the top portion of a cup curls
6 inward, does that mean that it does not
7 have an open top end?

8 A This one doesn't (Indicating).

9 Q But whether or not it curls inward doesn't
10 relate to whether or not any other
11 product --

12 A I'm speaking -- I'm speaking about this
13 cup. You can see in the photos and you
14 can see it in this, in this (Indicating).

15 Q Ms. Cavosie, I'm asking -- I'm trying to
16 get an understanding of the terms that you
17 opined about, one of them being open top
18 end.

19 A Okay.

20 Q So does whether or not the cup curls
21 inward relate to whether or not something
22 has an open top end?

23 A Okay. I'm saying that this cup that
24 you're asking me about is curling inward
25 and does not have an open top end.

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2 Q Okay. Ms. Cavosie, my question is, does
3 whether or not something --

4 MR. CARSTEN: Strike that.

5 BY MR. CARSTEN:

6 Q Does whether or not a cup have an inward
7 curling top end affect whether or not it
8 has an open top end?

9 MR. DILGER: Objection.

10 Asked and answered.

11 MR. CARSTEN: You may
12 answer. He hasn't stated that you
13 cannot answer.

14 MR. DILGER: She's already
15 answered twice.

16 MR. CARSTEN: Nate, no, she
17 hasn't.

18 MR. DILGER: She has. I
19 disagree.

20 Move on. You may not like
21 her answer, but she's answered you
22 twice.

23 MR. CARSTEN: Can you read
24 back the question, please?

25 MR. DILGER: Move on.

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2 (At which time, the
3 following portion of testimony was
4 read back by the stenographer:

5 Q Does whether or not a
6 cup have an inward curling top end
7 affect whether or not it has an open
8 top end?)

9 THE WITNESS: I think I
10 answered the question.

11 BY MR. CARSTEN:

12 Q And what is your answer?

13 MR. DILGER: Same objection
14 if you're asking the question again.
15 Asked and answered.

16 Move on.

17 BY MR. CARSTEN:

18 Q What is your answer?

19 THE WITNESS: Can you read
20 me back my answer? Sorry.

21 THE REPORTER: There is no
22 answer here. There's all
23 objections, et cetera.

24 THE WITNESS: Before that,
25 though. Beforehand.

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2 (At which time, the
3 following portion of testimony was
4 read back by the stenographer:

5 A Okay. I'm saying that
6 this cup that you're asking me about
7 is curling inward and does not have
8 an open top end.)

9 BY MR. CARSTEN:

10 Q Yes. And I'm not asking --
11 And I understand the record reflects your
12 opinion with respect to the exhibit I put
13 in front of you. I'm asking for your
14 expert opinion regarding open top end in
15 which you purport to provide an opinion in
16 litigation against my client, and I'm
17 asking whether or not a cup curls inward
18 at the top relates to your definition of
19 an open top end?

20 A That's a great question, and I think I
21 would have to research it a little bit
22 further to give you a proper answer.

23 Q Okay. So you don't know?

24 MR. DILGER: That's not what
25 she just said.

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2 BY MR. CARSTEN:

3 Q Are you prepared to provide any
4 information today regarding whether a cup
5 that curls inward at the top relates to
6 whether or not that cup has an open top
7 end?

8 A Well, I think it's unfair to ask me a
9 question that's outside the scope of the
10 Declaration that I'm here to give a
11 deposition on today.

12 MR. DILGER: I agree to that
13 criticism, and to the extent you
14 want to ask supplemental --

15 (At which time, the reporter
16 requested clarification.)

17 MR. DILGER: To the extent
18 you want to ask about topics outside
19 the Declaration, I don't think
20 that's fair or proper.

21 MR. CARSTEN: Nate, I'm
22 sorry, are you going to remove her
23 Declaration with respect to open top
24 end? Is that what we're agreeing
25 to?

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2 THE WITNESS: Okay.

3 MR. DILGER: I think we can
4 move on then.

5 THE WITNESS: Okay.

6 A You want me do it right on this one?

7 BY MR. CARSTEN:

8 Q Sure.

9 THE WITNESS: But then am I
10 going to being locked into some type
11 of circle, shape?

12 MR. DILGER: You're good.

13 You're good.

14 THE WITNESS: Okay.

15 A (Witness complied with counsel's request.)

16 Just do that. Okay.

17 BY MR. CARSTEN:

18 Q Ms. Cavosie, what is a tangent?

19 A A tangent is a line that touches the
20 surface of something.

21 Q What is the tangent of a straight line?

22 A What is the tangent of a straight line? A
23 tangent is a straight line that touches
24 the surface of something. That's my
25 recollection of what a tangent is.

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2 Q Are there any requirements as to what a
3 tangent is?

4 A That is a great question, and I would have
5 to research that a little bit further to
6 answer that properly.

7 Q Prior to this litigation, have you ever
8 used the term "tangent line" in your line
9 of business?

10 A I don't believe so.

11 Q Have you ever heard anyone else in the
12 field of bra design, clothing design,
13 undergarment design, use the phrase
14 "tangent line"?

15 A I do not believe so.

16 Q What is your expert opinion with respect
17 to the ordinary and customary meaning of
18 the phrase "substantially parallel"?

19 A Substantially parallel?

20 Q Sorry, say that one more time. I'm sorry.

21 A Sure. What is your expert opinion with
22 respect to the ordinary and customary
23 meaning of the phrase "substantially
24 parallel"?

25 A Not fully parallel.

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2 Q And what is the opposite of parallel?

3 A The opposite of parallel?

4 Q Correct.

5 A What is the --

6 You want me to give you a definition of
7 what the opposite of parallel is?

8 Q Do you have an understanding of what the
9 opposite of parallel would mean?

10 It's okay if you don't. I'm just asking
11 you if you have an understanding.

12 A Not parallel.

13 Q Do you have an understanding of the number
14 of degrees two lines would be if they were
15 farthest away from parallel as possible?

16 A No.

17 Q Do you have an understanding of how close
18 two lines need to be to parallel to be
19 substantially parallel, as you understand
20 that term?

21 A That is a great question. I definitely
22 think I would have to look into that
23 further to give you the appropriate
24 answer.

25 Q In your expert opinion, is it possible to

1 T. Cavosie - 8-14-2012

2 cup would be. In relation to this, that's
3 how I would determine it I would say.

4 Q Okay. I'm handing to you Exhibit
5 Number 12.

6 MR. CARSTEN: For the
7 record, Exhibit 12 is US Patent
8 Number 2,147,375 to Lazzari.

9 MR. DILGER: Okay. Thank
10 you.

11 BY MR. CARSTEN:

12 Q So, Ms. Cavosie, on Figure 3 of this
13 document --

14 A Okay.

15 Q -- how would you draw a tangent line to
16 the outer side?

17 A Well, honestly, Eric, I would have to read
18 this whole patent to give you an opinion
19 on that because I have not read this.

20 Q Okay.

21 A And wouldn't want to -- wouldn't want to
22 give you my opinion without really knowing
23 the context of what's in this patent.

24 Q So in terms of drawing a tangent line with
25 respect to the upper portion of the outer

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2 BY MR. CARSTEN:

3 Q Ms. Cavosie, let me hand you Exhibit
4 Number 14 (Handing).

5 A (Witness receiving document.)

6 MR. CARSTEN: For the
7 record, Exhibit Number 14 is US
8 Patent Number 3,204,638.

9 MR. DILGER: Okay. Thank
10 you.

11 THE WITNESS: Do you need
12 the number?

13 MR. DILGER: No. I've got
14 it. Thank you.

15 BY MR. CARSTEN:

16 Q Ms. Cavosie, I'd like you to look at
17 Figure 3 on the front.

18 A (Witness complied with counsel's request.)
19 Okay.

20 Q Do you see the line in the middle of the
21 bra, the --

22 MR. CARSTEN: Strike that.

23 BY MR. CARSTEN:

24 Q Do you see the vertical line or set of
25 three lines in the middle of the bra?

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2 A Can you give me a number reference?

3 Q Yes. For instance, Number 72, I think, is
4 the absolute inner line.

5 Do you see 72?

6 A Uh-huh.

7 Eric, can I just stop you real quick?

8 Q Sure.

9 A I have never seen this patent before ever
10 in my life.

11 Q I'm only going to ask you about Figure
12 Number 3.

13 A But I don't feel comfortable answering
14 questions about it because I haven't read
15 it in its entirety and would like to if
16 I'm going to give an opinion on anything
17 related to this.

18 Q Okay. I'm going to ask you one question
19 with respect to two lines, and if you
20 don't feel comfortable, that's fine, and
21 you can state that on the record.

22 Let me ask you the question and you can
23 tell me whether or not you feel
24 comfortable answering it.

25 A Okay.

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2 Q The question is solely, with respect to
3 line 72, the vertical line in the middle
4 of this bra, and 66, which is a strip,
5 let's call it, at an angle from the
6 center, vertical line 72, is it your
7 expert opinion that those two lines, or
8 tangent lines drawn from those two
9 straight lines, would be substantially
10 parallel, according to the plain and
11 ordinary definition as you understood and
12 discussed in your Declaration?

13 A I feel uncomfortable answering that
14 question only because I have never ever
15 seen this patent before in my life or read
16 it or understand anything about the
17 diagrams, the descriptions, any of it, so
18 I do feel uncomfortable answering that
19 question because I don't know the contents
20 of what are within this patent
21 (Indicating).

22 Q Okay. If I were to draw two lines on a
23 blank piece of paper, would you feel
24 comfortable opining as to whether or not
25 those two lines were substantially

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2 parallel, as you used that term in your
3 Declaration, with respect to the plain and
4 ordinary meaning --

5 A Well, no --

6 Q -- as applied in your asserted patents?

7 A I wouldn't feel comfortable because we're
8 not relating it to bras or cups or
9 cup-shaped or designs or anything like
10 that. I mean, just putting random lines
11 on a page, I wouldn't feel comfortable
12 assessing that.

13 Q Okay. I'm handing you Exhibit Number 13.

14 MR. CARSTEN: And

15 Exhibit Number 13 is US Patent
16 Number 2,079,426 to Schottenfels.

17 MR. DILGER: 2,079,426?

18 MR. CARSTEN: That's
19 correct.

20 MR. DILGER: Okay. Thank
21 you.

22 BY MR. CARSTEN:

23 Q Okay?

24 A Okay.

25 Q Do you recognize this patent?

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2 A I do.

3 Q Have you ever read this patent before?

4 A A long time ago; yes, I have.

5 Q Okay. I'd like you to turn to the second
6 page and take a look at Figure 10.

7 A Okay.

8 Q Are the inner and outer --

9 MR. CARSTEN: Strike that.

10 BY MR. CARSTEN:

11 Q Are the upper portions of the inner and
12 outer sides of the cups of this bra, as
13 depicted in Figure 10, substantially
14 parallel?

15 A I feel uncomfortable asking -- answering
16 that question because I have not read this
17 patent in years, and until I did read it
18 and know the ins and outs of every single
19 diagram, portion, figure of this patent, I
20 would feel uncomfortable answering that
21 question.

22 Q Ms. Cavosie, your Declaration states that
23 you reviewed the file histories of your
24 patents; is that correct?

25 A I did review it, uh-huh.

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2 Q And did you review those in preparation
3 for your Declaration?

4 A I did.

5 But I can't recall every detail that's in
6 every single one of these very detailed
7 and elaborate patents, and everything
8 single one of the --

9 There's a lot of -- there's a lot of
10 diagrams and descriptions here, and I
11 wouldn't feel comfortable being able to
12 recollect every single, you know, number
13 illustrating, you know, a feature of this
14 bra and be accurate in doing that when I
15 can't -- I cannot just call out by name
16 Oh, yes, 24 is such and such. I can't do
17 that.

18 Q Okay.

19 A But I did review everything in preparation
20 for this.

21 Q Okay. Well, this patent's only two pages
22 long, so why don't we go off the record
23 and I'd like you to take a minute.
24 I would like to ask --

25 A Even if I read it right now, I don't -- I

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would want to digest it, think about it before I gave you an opinion on specifically something you're asking me about.

So I don't think even if I read it right now I would be able to give you something without putting some serious thought behind it.

10 Q That's even with respect to the question
11 of whether or not the upper portions of
12 the inner and outer sides of the cups of
13 the bra depicted in Figure 10 are
14 substantially parallel?

15 A Well, there's a whole host of issues, in
16 my opinion, with that figure, so I -- I
17 don't -- one hundred per cent would not
18 feel comfortable answering that question.

19 Q What do you recall of the prosecution
20 history of your patents?

21 A All 500 pages of it?

22 Q No. Do you recall anything whatsoever?

23 A I mean, really?

24 Q Yes.

MR. DILGER: Objection.

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2 Argumentative.

3 No, I -- I -- other than --
4 other than --

5 A That's a lot of pages to recall detail.

6 BY MR. CARSTEN:

7 Q Do you recall anything substantive from
8 the prosecution histories?

9 A There's so much in there, Eric, I just
10 can't plunk something out, you know.

11 Q Do you recall any rejections that any of
12 your patents received?

13 A I do recall that there were rejections;
14 what they specifically are, I couldn't
15 tell you verbatim out of this thing right
16 now (Indicating).

17 Q I'm not asking for verbatim. I'm asking
18 if you have any recollection of anything
19 you took away from your review of the
20 prosecution histories.

21 A I have a recollection that there were
22 rejections. What they were, I can't
23 specifically cite right now unless I sat
24 down and read each and every page and word
25 of the prosecution history.

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2 Q So, sitting here today, you don't have an
3 understanding with respect to how your
4 patents differ from the prior art as
5 reflected in -- at least that's with
6 respect to the prosecution histories; is
7 that accurate?

8 MR. DILGER: I'm going to
9 instruct you not to answer that.
10 That is beyond the scope of the
11 Declaration and the reason for what
12 she's being provided today to
13 provide testimony.

14 BY MR. CARSTEN:

15 Q Let's go back to your Declaration.
16 Let's turn back to Exhibit Number 5.
17 A You would like me to look at my
18 Declaration?

19 Q Yes. Yes, please.
20 I'm sorry, yes. I wasn't clear. I would
21 like you to take a look at Exhibit
22 Number 5.

23 A Thank you for asking to clarify.

24 A Okay.

25 MR. DILGER: Eric, since

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2 we're moving to a new topic, can I
3 have five minutes for a bathroom
4 break?

5 MR. CARSTEN: Actually, I
6 was just -- wanted to finish off
7 but, you know what, you're not the
8 first -- it's fine. The court
9 reporter --

10 Let's take a break.

11 THE VIDEOGRAPHER: Time is
12 now approximately 4:27 P.M. Going
13 off the record.

14 (At which time, 4:27 P.M.,
15 there was a pause in the proceedings
16 until 4:37 P.M., at which time the
17 proceedings resumed.)

18 THE VIDEOGRAPHER: The time
19 is now approximately 4:37 P.M.
20 Going back on the record with Disk
21 Number 2 of the deposition of Tara
22 Cavosie.

23 BY MR. CARSTEN:

24 Q Ms. Cavosie, let's turn back to Exhibit
25 Number 6. I think you have a copy of

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2 you.

3 BY MR. CARSTEN:

4 Q And, Ms. Cavosie, I again want to quickly
5 go back over something that we were
6 discussing earlier with respect to open
7 top end.

8 A Okay.

9 Q Looking at Figure 1, in your expert
10 opinion, does the undergarment that is
11 shown in Figure 1 reflect an open top end?

12 A Well, Eric, I have never seen this patent
13 before ever until today, and in order to
14 really give you my best opinion, I would
15 have to read this entire patent.

16 Q So if you --

17 A So I would feel uncomfortable giving you
18 an answer because I have not read this and
19 I don't understand the contents of what
20 are within the claims and the body of this
21 patent.

22 Q Okay. Let me clarify, make sure that you
23 understand that I'm asking solely about
24 Figure 1. I'm not asking about the
25 patents, the invention, or any of the

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2 claims.

3 | A Okay.

4 Q Just with respect to the undergarments
5 that are shown in Figure 1, in your expert
6 opinion, would this undergarment reflect
7 an open top end?

8 A An open top end what?

9 Q Do the cups of the undergarment in Figure
10 1 have open top ends?

11 A They don't look like cups to me.

12 Q So with respect to --

13 MR. CARSTEN: Strike that.

14 BY MR. CARSTEN:

15 Q In your Declaration, you state that
16 certain bras are covered by your patents;
17 correct?

18 A Can I look at it myself, or no?

19 Q Sure, sure, sure. You may look. It's
20 Paragraph 10, for instance.

21 A Paragraph 10 of?

22 Q Your Declaration.

23 A My Declaration.

24 (At)

25 brief pause in the proceedings.)

brief pause in the proceedings.)

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2 A Are you sure I'm looking at ten, Page 2,
3 Number 10?

4 Q Correct.

5 A Do you want to read it?

6 Q READING FROM DOCUMENT:

7 Since then, Ce Soir has introduced two new
8 backless strapless bras covered by the
9 patents into the marketplace - the Super
10 Boost and the Body Sculpting.

11 A Okay. What are you asking me about that?

12 Q In Paragraph 10 you state that those bras
13 are covered by your patents; correct?

14 A The Super Boost and the Body Sculpting?

15 Q Correct.

16 A You are asking me if my patents are
17 covered -- if the bras Super Boost and
18 Body Sculpting is covered under my
19 patents?

20 Q I'm asking you to confirm that in your
21 Declaration you state that those two Ce
22 Soir bras are covered by your patents?

23 A I do state that in the Declaration.

24 Q Okay. So you are familiar with applying
25 your patents to products; correct?

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2 A Yes. But we're specifically talking about
3 her infringing products.

4 Q Okay.

5 A If I were to relate this patent to my --

6 Q I'm not --

7 A -- I would not be familiar with it.

8 Q Let me clarify again. I'm not asking
9 about this patent or the claims. I'm
10 looking at Figure 1, which just shows an
11 undergarment.

12 And would you, if you saw this in the
13 marketplace, going through the checklist
14 in your mind of your patents, would you
15 say that this satisfies having an open top
16 end?

17 MR. DILGER: This has been
18 asked and answered, Eric.

19 MR. CARSTEN: It has not
20 with respect to this, and I'm still
21 trying to understand her use of
22 "open top end." This is a fair
23 question.

24 MR. DILGER: It's not.

25 You're asking her about a document

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2 that she hasn't reviewed and she
3 wants to review and give an answer.

4 You may not like her answer --

5 MR. CARSTEN: There's
6 nothing -- there's nothing --

7 Nate, there's nothing in the
8 document with respect to this
9 figure. If she saw this figure in
10 the marketplace, there would not
11 being a document behind it. I'm
12 just asking from this figure can she
13 determine whether or not these have
14 top ends. If she cannot, she can
15 state that and we can move on.

16 A I can't determine anything because I
17 would --

18 I would never ever presume to determine
19 anything without understanding the
20 contents of what are within the patent and
21 the claims and understanding and fully
22 understanding the illustrations of
23 every -- each and every point of this bra
24 or this garment or article. I don't even
25 know if it's a bra. You can't tell from

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2 the pictures what it is (Indicating).

3 Like I said, I would have to read it to
4 really understand what it is.

5 Q Ms. Cavosie, can you look at Exhibit
6 Number 18, please?

7 A Do I have it?

8 Q Here you go (Handing).

9 MR. CARSTEN: For the
10 record, Exhibit 18 is US Patent
11 Design Patent Number 419,279.

12 MR. DILGER: 419,279. Is
13 there -- it looks like you skipped
14 16. Is that intentional?

15 MR. CARSTEN: Not
16 dramatically.

17 MR. DILGER: I mean, I just
18 want to make sure I haven't missed
19 it.

20 MR. CARSTEN: You haven't
21 missed it. I haven't used it yet.

22 MR. DILGER: Okay. Thank
23 you.

24 MR. CARSTEN: Do you have
25 Exhibit 18, Nate?

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2 MR. DILGER: Give me one
3 second here.

4 I think I do.

5 (At which time, there was a
6 brief pause in the proceedings.)

7 MR. DILGER: I don't.

8 MR. CARSTEN: No, it's a
9 design patent, US design patent.

10 MR. DILGER: Yeah, I don't
11 think I --maybe I --give me one
12 minute here.

13 MR. CARSTEN: We produced
14 it. I can give you a Bates number
15 if that's easy.

16 MR. DILGER: No, that
17 doesn't help. Just give me one
18 second here.

19 MR. CARSTEN: Okay.

20 MR. DILGER: I think I might
21 be able to fix this.

22 (At which time, there was a
23 brief pause in the proceedings.)

24 MR. DILGER: Okay. I think
25 I got it.

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2 MR. CARSTEN: Okay.

3 MR. DILGER: It is -- looks
4 like, Marco, David; David Marco.

5 MR. CARSTEN: That's right.

6 MR. DILGER: Okay. I think
7 I got it.

8 BY MR. CARSTEN:

9 Q So Exhibit 18 is a design patent, US
10 Design Patent 419,279.

11 A Uh-huh.

12 Q Ms. Cavosie, have you had a chance to
13 review this patent?

14 A No.

15 Q Can you do so now?

16 A Like, read the whole thing now?

17 Q Sure.

18 A Really?

19 Q Yes. It's a design patent.

20 A Okay.

21 (At which time, there was a
22 brief pause in the proceedings.)

23 A Okay.

24 Q Okay. I'll direct your attention to
25 Figure 1.

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2 A Okay.

3 Q In your expert opinion, Ms. Cavosie, does
4 the bra depicted in Figure 1 have an
5 arcuate bottom end?

6 MR. CARSTEN: Strike that.

7 BY MR. CARSTEN:

8 Q In your expert opinion, do the cups of the
9 bra in Figure 1 have arcuate bottom ends?

10 A I would say so, yeah.

11 Q In your expert opinion, do the cups of the
12 bra depicted in Figure 1 have open top
13 ends?

14 A Well, it's hard to say, and I'll tell you
15 why.

16 Because they illustrate no breasts on the
17 model, so it's hard to say where this
18 product is to be placed (Indicating).

19 Q And if a portion of the breast could be
20 shown while the bra is placed in its
21 proper position, would it have an open top
22 end?

23 A I think that would be just me speculating,
24 right, because how could I give an
25 accurate answer without seeing the breasts

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2 in relation to the bra?

3 Q What would you look for with respect to
4 the breasts in relation to the bra?

5 A Well, you're asking me to conjure up an
6 opinion -- to conjure up an opinion of
7 something that doesn't exist. I can't do
8 that.

9 I would need to see the breasts and the
10 bra illustrated on the breasts, and there
11 is no such thing so I can't answer that
12 question accurately.

13 Q Okay. Now, with respect to Figure 1 of
14 Exhibit 15 that I showed you a few minutes
15 ago.

16 | A Figure 1 of exhibit -- this one?

17 MR. DILGER: Which exhibit
18 are you on, Eric?

19 MR. CARSTEN: I'm going to
20 go back to Exhibit 15 for a second.

21 THE WITNESS: This one, Nate
22 (Indicating).

23 MR. DILGER: Okay. Thank
24 you.

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2 BY MR. CARSTEN:

3 Q Now Figure 1, do you see breasts in Figure
4 1?

5 A I do.

6 Q Do you see where the cups or the material
7 hit the breasts with respect to Figure 1?

8 A Again, I feel uncomfortable answering
9 questions about this particular patent
10 494,397, because I have never seen it
11 before in my life; I have never read the
12 contents that are within this patent; and
13 I couldn't accurately give you an opinion
14 until I was completely informed of the
15 specifics of this patent.

16 Q So even though I've tried to make clear
17 that I'm not asking about the specifics of
18 the patent, just talking about the image,
19 Figure 1, you do not feel comfortable
20 opining as to whether that's showing open
21 top end cups; correct?

22 A Just looking at Figure 1?

23 Q Correct.

24 A These do not look like cups to me so I
25 can't answer that question (Indicating).

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2 Are you talking about --

3 Sorry. Did you just ask me about open
4 top?

5 I'm sorry, can you ask that question
6 again?

7 Q In just Figure 1, just the image of
8 Exhibit 15, if we call what is labeled as
9 B, cups, in your opinion, do those cups
10 have open top ends?

11 A Well, you're asking me to give an opinion
12 on whether or not they are cups and I
13 don't know if they are or they aren't. I
14 haven't read the patent.

15 Q Let me, again, read back my question.

16 I'd like you to assume --

17 A I think that's -- I think that's unfair to
18 ask me to assume.

19 MR. DILGER: That question
20 calls for speculation.

21 BY MR. CARSTEN:

22 Q Ms. Cavosie, you're holding yourself out
23 as an expert in this matter; correct?

24 A I am, but you're asking me to assume that
25 something on a patent is something else

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2 when it may not be by reading the patent,
3 so I think that's an unfair question to
4 ask me.

5 Q Ms. Cavosie, I have stated on the record,
6 which is being transcribed and videotaped,
7 multiple times I am not asking you about
8 the patent or the claims or anything to do
9 with Patent Number 494,397. I'm simply
10 using Figure 1 --

11 A Uh-huh.

12 Q -- which has an illustration of a garment.

13 A Uh-huh.

14 Q And we've talked about open top end today,
15 and when we were just discussing
16 Exhibit 18, you said that you could not
17 opine as to whether or not the bra,
18 Exhibit 18, is open top end because you do
19 not have the picture of the breasts and
20 where the bra was hitting the breasts.

21 A Right.

22 Q So I'm going back and showing you a
23 picture where an undergarment is hitting
24 the breasts and trying to understand your
25 definition of open top end as it relates

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2 to your asserted patents, and I'd like to
3 know your opinion, if you have one, if --

4 A But I told you, I cannot give you an
5 opinion on a patent that I have not read
6 and have seen for the first time right
7 this very minute. I cannot give you an
8 opinion on that.

9 Q You cannot give an opinion with respect to
10 the Figure Number 1, which is what I'm
11 asking you about; correct?

12 A I can't give you an opinion on anything
13 related to Patent Number 494,397 because I
14 have not read it and I am seeing it for
15 the very first time right now and I do not
16 know the details within this patent, the
17 claims of this patent. I would need to
18 review it, think about it, and then give
19 you an appropriate opinion, which I don't
20 think I can do right now on the fly seeing
21 this for the very first time.

22 Q Okay.

23 A I think it's unfair to ask me do that.

24 Q So Exhibit Number 18 you do feel
25 comfortable on the fly giving an opinion

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2 as to an arcuate bottom end on Figure 1;
3 correct?

4 A I would say that that's fair to say that,
5 yeah.

6 Q But you are not comfortable giving an
7 opinion with respect to whether or not it
8 has an open top end; correct?

9 A Well, I did -- I --
10 Correct. Because there are no breasts
11 present in the illustration. So how do we
12 know where the bra would be positioned or
13 not positioned or where it would fall on
14 the body of the wearer? It's -- it's
15 like --
16 It's kind of a crazy question, because no
17 breasts exists on this illustration
18 (Indicating).

19 Q So if the illustration from Exhibit 15 was
20 in Exhibit 18, you'd be comfortable
21 because there were no words surrounding
22 that?

23 A I think that's a ridiculous question. I'm
24 telling --
25 No, that's not what I'm saying. What I'm

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2 saying is, I can't give you an opinion on
3 Patent Number 494,397 because I have not
4 read it; seeing it for the first time
5 today.

6 Q Again, I never asked about your opinion
7 with respect to the patent. I'm solely
8 asking about the figure.

9 Figure 1 in Exhibit 15 --

10 A I don't even know what Figure 1 is because
11 I haven't read the patent.

12 Q Okay. You are comfortable with Figure 1
13 of Exhibit 18 being a bra; correct?

14 A Well --

15 MR. DILGER: I'm sorry,
16 what's the question again? I missed
17 it.

18 MR. CARSTEN: That she's
19 comfortable with Figure 1 of Exhibit
20 18 being a bra.

21 (At which time, there was a
22 brief pause in the proceedings.)

23 A I'm not comfortable saying that. They
24 refer to it as that, but they're also
25 saying that the --

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2 I'm going to read --

3 I'm going to read the description Figure
4 1.

5 READING FROM DOCUMENT:

6 Perspective view of the present invention
7 depicted on a model and adhered thereon by
8 tape (the model and tape being formed in
9 phantom lines and forming no part of the
10 design);

11 So I don't know what that is. It doesn't
12 give an example of does it -- is it a
13 breast pad? Is it a nipple cover? Is it
14 a pad? Is it a -- there's no description.

15 So I would merely be speculating as to say
16 what it is or it isn't, and I would feel
17 uncomfortable answering what it actually
18 is because they are showing things in the
19 illustration and then in the description
20 saying those things don't exist.

21 Q So, in your opinion, the garment depicted
22 in Figure 1 of Exhibit 18, you can't
23 determine whether or not that has cups
24 that have an arcuate bottom end?

25 A It looks like there's something, a garment

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2 of some sort that has an arcuate bottom.

3 Q Do you have an opinion, one way or
4 another, as to whether or not those are
5 cups that have an arcuate bottom end?

6 A They don't describe --

7 Patent Number Design 419,279 does not
8 describe it as cups.

9 Q Okay. So, again, my question was, do you
10 have an opinion, one way or another, as to
11 whether or not those are cups?

12 MR. DILGER: Asked and
13 answered.

14 BY MR. CARSTEN:

15 Q You may answer.

16 A Nate just said "asked and answered."

17 Q That's an objection. It's noted on the
18 record.

19 MR. DILGER: If he wants to
20 hear your answer again, I guess --

21 A Patent Number Design 419,279 does not
22 describe anywhere using the word "cup."
23 That's somewhat similar to what I said the
24 last time, right?

25 O It is.

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2 And let me ask my question again, because
3 here's my question: Is it your opinion
4 that cups are depicted in Figure 1?

5 Your expert opinion. You're an expert.

6 You purport to be an expert on bras.

7 I'm just asking your opinion. Not what
8 the document says, what the inventor says
9 about the bra, just your opinion.

10 And if you don't have an opinion, you can
11 state so on the record.

12 A I don't have an opinion.

13 Q Thank you.

14 Let's move back to Exhibit Number 2, your
15 Patent Number -- the 952 patent.

16 A Okay. 6,257,952?

17 Q Correct.

18 You are comfortable opining on this
19 patent, discussing this patent?

20 A Sure.

21 MR. DILGER: Related to her
22 Declaration, yes.

23 BY MR. CARSTEN:

24 Q So, Ms. Cavosie, where in the '952 patent
25 do you illustrate where the bra hits the

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2 to Nate because I do have just a very two
3 second question for him.

MR. CARSTEN: Sure.

Off the record.

6 THE VIDEOGRAPHER: Time is
7 now approximately 5:08 P.M. Going
8 off the record.

9 (At which time, 5:08 P.M.,
10 there was a pause in the proceedings
11 until 5:10 P.M., at which time the
12 proceedings resumed.)

13 THE VIDEOGRAPHER: Is
14 everybody ready?

15 MR. CARSTEN: Yes.

16 | THE WITNESS: Yes.

17 MR. DILGER: Eric, we need
18 to wrap this up in about ten
19 minutes.

20 THE VIDEOGRAPHER: The time
21 is now --

22 MR. DILGER: We need to wrap
23 it up in about ten minutes because I
24 can't stay on after that point.

25 | THE WITNESS: The

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2 videographer is talking. Hang on
3 one second.

4 MR. DILGER: My apologies.

5 THE VIDEOGRAPHER: The time
6 is now approximately 5:10 P.M.
7 Going back on the record.

8 BY MR. CARSTEN:

9 Q Okay. Ms. Cavosie, we took a break for
10 you to speak to your attorney.

11 A Yes.

12 Q Do you need to change any of your
13 testimony?

14 A No, no. Can you just ask of me that last
15 question one more time?

16 Q Answer?

17 A Ask me that last question, because I --

18 MR. DILGER: I think it was
19 about an open bottom end, Eric.

20 MR. CARSTEN: Okay.

21 BY MR. CARSTEN:

22 Q In your opinion, is it possible for a
23 U-shaped cup to have a closed bottom end?

24 MR. CARSTEN: Strike that.

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2 BY MR. CARSTEN:

3 Q In your opinion, is it possible for a
4 U-shaped cup to have an open bottom end?

5 A I may be just being a huge pain right now,
6 but that's not the question you asked me.
7 You asked me if I had ever seen a bra with
8 an open bottom end ever exist or does it
9 exist, or are you now not asking me that
10 question?

11 Q Are you able to answer the question I just
12 asked?

13 A Which one? I'm sorry.

14 Q In your opinion, is it possible for a
15 U-shaped cup to have an open bottom end?

16 A Well, obviously it is impossible for me to
17 have seen every bra that ever existed in
18 the world of bras.

19 So, does one exist? Could one exist? I
20 wouldn't even begin to speculate on that.

21 Q Is it possible for a cup which, in your
22 opinion, is U-shaped, to have a closed top
23 end and still be U-shaped?

24 A Is it my opinion --

25 I'm just going to say it back to you.

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2 Is it my opinion that a bra that is -- a
3 cup that is U-shaped can have a top
4 portion that is closed, is that what
5 you're asking me?

6 Q Correct.

7 A Yes, I think that's possible.

8 MR. CARSTEN: Let's go off
9 the record.

10 THE VIDEOGRAPHER: The time
11 is now approximately 5:12 P.M.
12 Going off the record.

13 (At which time, 5:12 P.M.,
14 there was a pause in the proceedings
15 until 5:15 P.M., at which time the
16 proceedings resumed.)

17 THE VIDEOGRAPHER: The time
18 is now approximately 5:15 P.M.
19 Going back on the record.

20 BY MR. CARSTEN:

21 Q Ms. Cavosie, can you turn to your exhibit
22 again, your Declaration again?
23 Can you call that up again and take a look
24 at that?

25 A Exhibit 5?

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2 opinions that you are giving with respect
3 to claim construction in this matter?

4 A Yes.

5 Q We marked two other exhibits. I'd like to
6 put that in front of you very briefly.

7 Exhibit 11 (Handing).

8 MR. CARSTEN: Exhibit 11 is

9 Patent Number 2,869,553.

10 MR. DILGER: 2,869,553?

11 MR. CARSTEN: Correct.

12 MR. DILGER: Thank you.

13 A Okay.

14 BY MR. CARSTEN:

15 Q I take it, Ms. Cavosie, you have not seen
16 this patent before?

17 A I have not.

18 Q Looking solely at the figures on the first
19 page, are you comfortable opining that the
20 device that is attached to the breast of
21 the user in Figure 4 has an arcuate bottom
22 portion?

23 A Well, I cannot give you an opinion on that
24 because this figure, in Figure 4, is, you
25 know, askew and I can't see the outer side

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2 of the right hand of the models, the outer
3 portion of the cup or the bottom portion
4 on that side, so I could not --

5 In addition to that, I have never seen
6 this, I have never read the contents of
7 this patent, so I would feel uncomfortable
8 giving you an opinion based on this Patent
9 Number 2,869,553.

10 Q Okay. With respect to the cup that is
11 adhered to the left breast of the wearer
12 in Figure 4, are you comfortable opining
13 as to whether or not that device has an
14 arcuate bottom end?

15 A I cannot see the inner portion of the
16 left-hand cup, but it would be fair to say
17 it does have --
18 Did you ask me if it had an arcuate
19 bottom?

20 Q I asked if you would be comfortable
21 opining on that, whether it had an arcuate
22 bottom?

23 A I would. Without reading it and without
24 knowing the ins and outs of this patent or
25 the specific details of the patent, the

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2 illustrations of the patent or the claims
3 of the patent, I would say, just looking
4 at it, the left cup in Figure 4 does seem
5 to have an arcuate bottom (Indicating).

6 Q And, to confirm, I'm solely asking about
7 the figure, not about the patent, the
8 claims, or the specifications, just the
9 figure as it appears.

10 A Uh-huh.

11 Q Same question, just as the figure appears
12 with respect to the left cup, do you feel
13 comfortable, opining as an expert, as to
14 whether or not that cup has an open top
15 end?

16 MR. DILGER: I don't think
17 we've established that it's a cup.

18 A No, I wouldn't feel comfortable answering
19 that because there's a lot of stuff going
20 on on the top --
21 There's a lot going on and I would want to
22 know the details of each and every thing
23 before I would answer that question.
24 So, no, I don't feel comfortable answering
25 that question without reading the

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2 | specifics.

3 Q So with respect to the simply the shape of
4 the article that is adhered to the left
5 breast and the curves of the breast
6 indicated in the figure, based on that,
7 you are not comfortable opining as to
8 whether or not it has an open top end;
9 correct?

10 A I am uncomfortable answering that question
11 until I read this patent thoroughly and
12 have time to, kind of, digest it and
13 thoughtfully give you an answer.

14 Q Okay. Let's turn to Exhibit 16.

15 MR. DILGER: Hey, Eric, I
16 really do have to wrap this up.

17 MR. CARSTEN: This is the
18 last one, Nate.

19 MR. DILGER: Okay. Thank
20 you.

21 THE WITNESS: Nate, right
22 there, see it?

23 MR. DILGER: 2,061,238?

24 | THE WITNESS: Yes.

25 MR. DILGER: Okay.

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2 MR. CARSTEN: Exhibit 16 is

3 US Patent number 2,061,238.

4 A Yes.

5 BY MR. CARSTEN:

6 Q With respect to Exhibit 16, Ms. Cavosie,
7 again, I'm asking you solely with respect
8 to the figures that appear on the first
9 page, not with respect to the patent, any
10 claims of the patent, any specification.

11 Interpreting the figures that you see, as
12 an expert in the field, of the device that
13 is adhered to the user in Figure 1 and you
14 can see it unadhered in Figure 2.

15 In your expert opinion, does it appear
16 that the cups of the device in figures 1
17 and 2 have arcuate or rounded bottom ends?

18 A Again, I'm going to tell you that I have
19 never before seen Patent Number 2,061,238.
20 This is the first time I've ever seen it.
21 I have not had an opportunity to read it.
22 I do not know the ins and out of this
23 patent or any of the details of the patent
24 or the claims, and I feel uncomfortable
25 answering any questions about it.

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2 Q Okay. So just with respect to the figures
3 that appear on 1 and 2 --

4 A Uh-huh.

5 Q -- you do not feel comfortable, as an
6 expert, characterizing whether those
7 figures, just on their own, not with
8 respect to the patent, depict cups with
9 rounded bottom ends; correct?

10 A I would --

11 Well, you're saying a different word now.

12 Q I'm saying that you do not feel
13 comfortable opining; correct?

14 A I do not feel comfortable giving an
15 opinion on something that I know -- that I
16 don't know anything about. I would have
17 to read the body of this patent and the
18 claims of this patent in order to be able
19 to give you the appropriate answer about
20 the specifics of this patent.

21 Q Okay. Looking at figures 1 and 2, can you
22 come to a conclusion as to whether or not
23 the cups of this garment are U-shaped?

24 A I wouldn't give that opinion because I
25 haven't read this patent.

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2 Q And, to be clear, solely with respect to
3 just the figures?

4 A Right.

5 Q Can you --

6 A But the figures are part of it all,
7 though. The figures are part of the
8 description and part of the claims and all
9 of it is connected and I wouldn't feel
10 comfortable giving you an opinion on
11 something that I am not completely
12 informed of; that I don't understand the
13 content of it inside and out; and until I
14 did that, digested it, understood it and
15 thoughtfully considered it, I wouldn't
16 being able to give you an answer about
17 this patent.

18 Q Again, I'm not asking about this patent
19 and --

20 A Then I shouldn't look at this then?

21 Q No. I'm asking about the figures.
22 And if you saw these figures in an
23 advertisement -- and I'm asking a
24 hypothetical, but you are purporting to be
25 an expert.

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2 | A Uh-huh.

3 Q Okay. So I'm asking you to apply your
4 expert knowledge.

5 | A Right.

6 Q If you saw these figures in Marie
7 Claire --

8 | A Okay.

9 Q -- would you, based on these figures,
10 conclude that these cups, if they are
11 cups -- tell me if you don't think they
12 are cups -- are U-shaped?

13 A I --

MR. DILGER: Objection.

15 Hold on.

16 Objection. Calls for
17 speculation, asked and answered.

18 Go ahead. You can answer if
19 you want.

20 THE WITNESS: Okay. I'll
21 just tell him again: It's hard to
22 determine without reading this what
23 this is. Again, there are no
24 breasts depicted in this
25 illustration, so how am I to

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2 determine what this is, how it fits
3 the body, what the shape of anything
4 is if there are no breasts? I
5 just...

6 BY MR. CARSTEN:

7 Q Sitting here today, you are unable to give
8 an opinion as to whether or not figures 1
9 and 2 depict a garment with U-shaped cups;
10 is that fair?

11 A Is it a cup? Is it not a cup? Where does
12 it fall on the breast? I don't know.
13 You can't tell because no breast exists in
14 this illustration, so is this meant to
15 cover the breast? Is it not meant to
16 cover the breast?
17 I don't know, because one, there are no
18 breasts depicted in Figure 1. There --
19 and I haven't read the details within this
20 patent, the body of it, the claims of it,
21 understanding the figures, so I can't give
22 you an opinion.
23 But just off the fly, without reading it,
24 there are no breasts there, so I can't
25 determine --

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2 Is it a belt? Is it a -- a -- a -- I
3 don't know. I don't know.

4 Q Okay.

5 A It doesn't explain it here and I haven't
6 read it, so I can't give you my best
7 opinion with thought and, and -- and --
8 you know, applying my expertise to this
9 because I haven't read it.

10 Q Okay. I'm going to ask what I think is --

11 MR. CARSTEN: Strike that.

12 MR. DILGER: Eric, I've got
13 to go.

14 MR. CARSTEN: Well, I'm
15 going to finish this line of
16 questioning, Nate. I'm sorry. If
17 you'd like to pause and get one of
18 your colleagues.

19 I flew out here. You did
20 not say it had to end at five. We
21 started at two.

22 MR. DILGER: You keep asking
23 the same question over and over.

24 MR. CARSTEN: Nate, I'm
25 going to get an answer to this

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2 question. As a courtesy, I'm happy
3 to pause so you can get one of your
4 colleagues.

5 We spent significant time to
6 arrange for you to have video
7 access, which I wasn't informed that
8 you were expecting until a half an
9 hour, an hour before the deposition.

10 MR. DILGER: Look at your
11 e-mail.

12 MR. CARSTEN: Yes. It was
13 an hour or two before the deposition
14 today.

15 MR. DILGER: Look at your
16 e-mail. When they provided us, we
17 made clear it was going to be a
18 telephonic.

19 MR. CARSTEN: I'm going to
20 ask this question. As a courtesy,
21 I'm happy to pause so you can grab
22 Pete or Kainoa. I'm going to ask a
23 question about Exhibit 16.

24 MR. DILGER: The same
25 question you just asked.

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2 MR. CARSTEN: I'm going to
3 ask a question about Exhibit 16.

4 MR. DILGER: Ask your
5 question.

6 BY MR. CARSTEN:

7 Q With respect to Exhibit 16, solely with
8 respect to the figures 1 and 2,
9 Ms. Cavosie, you are uncomfortable giving
10 an opinion as to whether or not this
11 device has U-shaped cups; yes or no?

12 A I'm uncomfortable giving an opinion on
13 Patent Number 2,061,238, because I have
14 not read it. I don't understand the
15 details of it, I don't understand what the
16 figures are without reading it.
17 So, no, I feel uncomfortable giving you an
18 opinion on Patent 2,061,238 because I have
19 not read it and have not seen it until
20 today.

21 Q Okay. The transcript will reflect my
22 question.

23 With respect to figures 1 and 2 and the
24 images of 1 and 2, disregarding the
25 patents, the claims, and the

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2 specifications, you are uncomfortable as
3 an expert opining as to whether or not
4 there are cups depicted and whether or not
5 those cups have substantially portion --
6 substantially parallel upper portions; is
7 that correct?

8 A I don't feel comfortable answering that
9 question because I have not read this
10 patent (Indicating).

11 MR. CARSTEN: Okay.

12 Nate, if you have to leave,
13 obviously we take this -- we will
14 have to continue this and we
15 dispute -- ahead of time, please,
16 obviously, in the future, let us
17 know when you need to leave on the
18 West Coast at two something before
19 the day of, so...

20 MR. DILGER: We provided a
21 time and date from two until five.

22 MR. CARSTEN: You did not.

23 MR. DILGER: You are 30
24 minutes over that.

25 MR. CARSTEN: Nate, Nate.

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2 MR. CARSTEN: That's fine.

3 MR. DILGER: Okay. Just

4 e-mail it to me, please. Thank you.

5 THE VIDEOGRAPHER: The time
6 is now approximately 5:33 P.M. This
7 completes today's testimony of Tara
8 Cavosie. Going off the record.

9

10 (Whereupon, the Deposition

11 of TARA CAVOSIE concluded at 5:33
12 P.M.)

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This is the Deposition of

TARA CAVOSIE

taken in the matter, on the date, and at the time and place set out on the title page hereof.

It was requested that the deposition be taken by
the reporter and that same be reduced to
typewritten form.

11 It was agreed by and between counsel and the
12 parties that the Deponent will read and sign the
13 transcript of said deposition.

1

2 DEPONENT'S CERTIFICATE

3 STATE OF _____ :

4 COUNTY/CITY OF _____ :

5 Before me, this day, personally
6 appeared TARA CAVOSIE, who, being duly sworn,
7 states that the foregoing transcript of his/her
8 Deposition, taken in the matter, on the date,
9 and at the time and place set out on the title
10 page hereof, constitutes a true and accurate
11 transcript of said deposition.

12

13

14 TARA CAVOSIE

15

16

17

18 Signed and subscribed to before me
19 this ____ day of _____, 20 ____.

20

21

22

23

24

25

1
2 DEPOSITION ERRATA SHEET

3 Assignment No.: 345240

4 Case Caption: CE SOIR LINGERIE CO., INC.,
5 vs.
6 IMAGINE ENTERPRISES, LLC.

7 Declaration UNDER PENALTY OF PERJURY

8 I declare under penalty of perjury
9 that I have read the entire transcript of my
10 Deposition taken in the captioned matter or the
11 same has been read to me, and the same is true
12 and accurate, save and except for changes and/or
13 corrections, if any, as indicated by me on the
14 DEPOSITION ERRATA SHEET hereof, with the
15 understanding that I offer these changes as if
16 still under oath.

17 Signed on the _____ day of _____, 20____.

18 TARA CAVOSIE

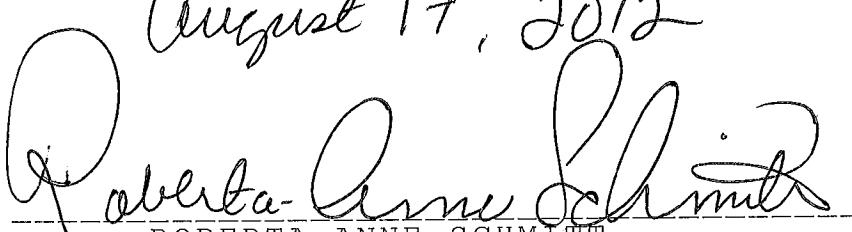
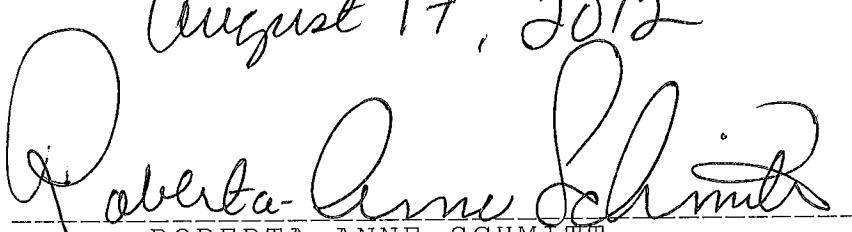
1

2 REPORTER'S CERTIFICATE

3

4 I, ROBERTA-ANNE SCHMITT, a Court
5 Reporter and Notary Public in and for the State
6 of New York, do hereby certify that I recorded
7 stenographically the proceedings herein at the
8 time and place noted in the heading hereof, and
9 that the foregoing transcript is true and
10 accurate to the best of my knowledge, skill and
11 ability.

12 IN WITNESS WHEREOF, I have hereunto
13 set my hand.

14 *August 17th, 2012*
15 
16 
17 ROBERTA-ANNE SCHMITT

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